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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

In its resolution 62/109, the General Assembly requested the Secretary-General to submit to the Assembly at its sixty-third session a report on the implementation of the resolution. The present report, prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), is submitted pursuant to that resolution. The period covered by the report is January to August 2008.

Considering the width of the concerns set out by the General Assembly in the resolution, as well as the human rights mandate of OHCHR, the report addresses only a few of the issues detailed by the Assembly, specifically, the policy of closures and severe restrictions, including its impact on the socio-economic situation in the Occupied Palestinian Territory, the wall and the destruction of property, and the conditions affecting Palestinian prisoners in Israel.

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I. Introduction

1. In its resolution 62/109, the General Assembly expressed grave concern about

> ... the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force, the use of collective punishment, the reoccupation and closure of areas, the confiscation of land, the establishment and expansion of settlements, the construction of the wall inside the Occupied Palestinian Territory in departure from the Armistice Line of 1949, the destruction of property and infrastructure, and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem.

It also expressed concern about the continued establishment of Israeli checkpoints in the Occupied Palestinian Territory, including East Jerusalem and about the Israeli policy of closures, severe restrictions, and a permit regime that obstruct the movement of persons and goods, including medical and humanitarian personnel and goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and about the consequent violation of the human rights of the Palestinian people and negative impact on their socio-economic situation, which remains that of a dire humanitarian crisis.

2. The General Assembly also expressed deep concern about the vast destruction caused by the Israeli occupying forces, including of religious, cultural and historical sites, of vital infrastructure and institutions of the Palestinian Authority, and of agricultural land throughout Palestinian cities, towns, villages and refugee camps, and about the short- and long-term detrimental impact of such destruction on the socio-economic and humanitarian conditions of the Palestinian civilian population.

3. In addition, the General Assembly expressed its deep concern that thousands of Palestinians, including hundreds of children and women, continued to be held in Israeli prisons or detention centres under harsh conditions that impair their well-being, and expressed concern about the ill treatment and harassment of any Palestinian prisoners and all reports of torture.

4. Taking into consideration recent reports on the humanitarian situation in the Gaza Strip in 2008 (A/HRC/7/76 and A/HRC/8/17), which also deal with the killing of Palestinian and Israeli civilians as well as the firing of rockets against Israeli civilian areas, and also considering the width of the concerns made by the General Assembly as well as the human rights mandate of the Office of the United Nations High Commissioner for Human Rights, the present report addresses progress made in the implementation of resolution 62/109 concerning only a few of the issues detailed by the Assembly, specifically, the policy of closures and severe restrictions, including its impact on the socio-economic situation in the Occupied Palestinian Territory, the wall and the destruction of property, and the conditions affecting Palestinian prisoners in Israel.

5. The question of the impact of Israeli settlements on the enjoyment of human rights in the Occupied Palestinian Territory is addressed in a separate report submitted pursuant to General Assembly resolution 62/108 (A/63/519). Furthermore, the Secretary-General will submit a report on the work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the

Palestinian People and Other Arabs of the Occupied Territories pursuant to resolution 62/106.

6. Considering the wealth of information available on the issue of freedom of movement in the Occupied Palestinian Territory, the present report relies heavily on information made publicly available by the Office for the Coordination of Humanitarian Affairs (see http://www.ochaopt.org).

II. Progress in the implementation of the resolution

A. Israeli policy of closures and severe restrictions on the movement of persons and goods in the Occupied Palestinian Territory

7. During the period under review, the Government of Israel continued to impose on Palestinian residents of the Occupied Palestinian Territory the comprehensive closure system, which Israel claims is necessary for its security. The system consists of a complex array of physical and administrative obstacles that have a severe and detrimental impact on the rights of Palestinians as guaranteed in article 12 of the International Covenant on Civil and Political Rights, and more specifically the individual's right to freedom of movement, to choose a residence and to leave and re-enter the Occupied Palestinian Territory.

8. The restrictions have had serious consequences for Palestinians, including economic consequences. The restrictions continue to undermine the enjoyment of other rights guaranteed under international human rights law by effectively impeding access to health care, education and employment. They have also caused significant financial hardship and the interruption of essential social networks and communities.

9. In the West Bank, the restrictions have made access to essential services, such as health and education, difficult and at times impossible. Approximately 1.4 million Palestinians are forcibly confined in the Gaza Strip, where social and economic conditions are deteriorating rapidly.

10. Imposed under military orders and regulations, restrictions on freedom of movement in the West Bank are issued and usually published by the Military Commander of the Israel Defense Forces (IDF) in the West Bank. As there are no established rules of procedure in relation to those orders, their content can vary from day to day and from commander to commander, while the manner of their implementation is left largely to the discretion of the soldiers.

11. The permit system imposed on all Palestinian identification card holders within the occupied territory remained active during the period covered by the report. For Palestinian residents of the Gaza Strip, permits to enter Israel, and hence to travel to East Jerusalem and the West Bank, are still difficult to obtain except in rare circumstances, such as for VIPs, some United Nations personnel and certain business officials and for medical emergencies. Permits are also required to gain access to certain areas along the wall — in the "seam zone" — or to cross certain checkpoints by car, for instance in Nablus.

12. The application process for permits is time-consuming and expensive, and applications are frequently rejected.[1] The rules as to whether a permit for travel is required or will be granted are fluid and can change daily.[2] Even when a permit is granted, it does not automatically guarantee the holder permission to pass through a checkpoint.[3] There is no formal process for appealing a rejection, the only option being to resubmit the application. Furthermore, there is no automatic renewal procedure for a permit that has expired. All permits must be applied for anew, and there is no guarantee that a new one will be granted.

13. The permit system is enforced by a web of checkpoints operating along the Green Line and in the West Bank and East Jerusalem. At the end of April 2008, the Office for the Coordination of Humanitarian Affairs estimated that there were 88 manned obstacles out of a total of 607 closure obstacles in the West Bank.[4] The general closure can be enforced at any time without notice. In the first half of 2008, 41 days of general closure were enforced in the West Bank, compared to 19 in 2007. As far as Gaza is concerned, the Strip has been completely sealed off since January 2008, which has led to a serious humanitarian crisis. Since the entry into force of the Egyptian-brokered ceasefire between Hamas and the Government of Israel on 19 June 2008, access to and from the Gaza Strip has improved slightly.

14. Checkpoints are manned by the Israeli security forces, border police or private contractors. In areas of the West Bank where the barrier encloses agricultural land, Palestinians need to have the appropriate permit in order to have access to their land. Even individuals who have been issued a permit enjoy no guarantee of permission to cross, as the decision whether to allow passage is ultimately in the hands of the personnel staffing the checkpoint.[5] According to information received, Palestinian identification card holders face long delays, personal searches and, at times, harassment by checkpoint personnel.

15. Additional restrictions can be instituted at checkpoints with little or no notice. For instance, males between the ages of 16 and 35 are often refused permission to cross. Such restrictions are reportedly frequently imposed in Nablus and Jenin.[6] Palestinians are often limited to crossing at specific times and are usually prohibited

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[1] Precise statistics on the refusal rate are not available. Reasons are rarely, if ever, provided; most refusals are transmitted verbally and without explanation. At most, the refused application may merely have the word "security" stamped on it, with no other details. The vast majority of refused applications have no reason provided at all. See "Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank", B'Tselem, Information Sheet, August 2004.

[2] The Government of Israel has never published or made public the rules or procedures governing the granting of permits to Palestinians. B'Tselem reports (see reference in note 1) that the Israeli authorities confirmed the lack of definitive criteria in determining permit applications in a meeting held in June 2004.

[3] According to *Waiting for Justice: Al-Haq: 25 Years of Defending Human Rights (1979-2004)*, the process is subject to conflicting interpretations of unwritten rules by different officials, rendering the requirements for obtaining a permit and the outcome of an application unpredictable.

[4] Including manned and unmanned checkpoints, roadblocks and barriers, trenches, earth mounds and other obstacles to movement of Palestinians.

[5] See reference in note 1.

[6] The legal basis on which these closures and restrictions have been imposed in Nablus is before the Israeli Supreme Court. As at the date of the present report, no update on the petition had been received. For more information, see http://www.acri.org.il/eng/Story.aspx?id=401 and http://www.acri.org.il/eng/Story.aspx?id=484.

from doing so in the evening or at night, except in urgent humanitarian cases.[7] Local closures and curfews can be imposed at any time without notice. Such restrictions are frequently applied in and around Jenin and Nablus.

16. IDF have issued a "Procedure for Handling of a Resident of Judea and Samaria Who Arrives at a Checkpoint in an Urgent Medical Situation"[8] which is intended to expedite the passage of persons requiring medical treatment through checkpoints. However, what constitutes an emergency is left to the discretion of the personnel at the checkpoint. The Office for the Coordination of Humanitarian Affairs reports that in 2007 there were on average 27 cases a month of ambulances being delayed at checkpoints and 20 cases in which ambulances were prohibited from crossing. From January to June 2008, a total of 86 ambulances were reportedly delayed at checkpoints, and 118 were denied access. There are also frequent reports of soldiers damaging medical equipment and ambulances and verbally or physically assaulting ambulance drivers and patients.

17. The Government of Israel has not met the conditions established under article 4 of the International Covenant on Civil and Political Rights for derogation from the right to freedom of movement. This article requires that when imposed, a derogation must be temporary, existing only during an officially proclaimed state of emergency that threatens the life of the nation. The measures taken under the derogation must be imposed only to the extent strictly required by the exigencies of the state of emergency. They must not be inconsistent with the State's other international legal commitments and must not involve discrimination on the ground of race, colour, sex, language, religion or social origin. A derogation is not permitted in relation to certain rights under the Covenant. In addition, the State party is obliged to inform the other States parties to the Covenant, through the Secretary-General, of the provisions from which it has derogated and of the reason for that course of action. The restrictions imposed by the Government of Israel on the Palestinian population also infringe on its duties under international humanitarian law.

18. Israeli courts have recognized that Israeli policies and activities in the West Bank fall under the legal regime of occupation and include inherent responsibilities of the State of Israel for the welfare of the Palestinian population living under its occupation. The Israeli High Court has consistently found that the Hague Regulations of 1907, as representative of customary international law, fully apply to the West Bank and the Gaza Strip. On the other hand, the Government of Israel has consistently disputed the de jure application of the Fourth Geneva Convention to the Occupied Palestinian Territory, although it has stated that it would respect the de facto application of the humanitarian provisions of the Convention. However, neither the Israeli courts nor the Government of Israel has ever issued a definitive statement of which humanitarian provisions apply.

19. While international humanitarian law imposes obligations on the occupying Power regarding the population resident in the occupied territory, it nevertheless permits the occupying Power to take measures to protect its own forces and to ensure security. In relation to the duties of the occupying Power, article 43 of the Hague Regulations of 1907 states:

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[7] "Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank", p. 13, B'Tselem, August 2007.

[8] Ibid., p. 67.

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

20. While the occupying Power has considerable discretion as to the choice and exercise of security measures or military imperatives it may consider necessary, no action should be taken by the occupying Power that subverts the rights and protections afforded to protected persons living in the occupied territory under international humanitarian and human rights law, nor to reverse the relationship between those rights and protections vis-à-vis any restriction, thereby making the restriction the norm and the right or protection the exception.

B. The wall in the Occupied Palestinian Territory

21. In June 2002, the Israeli Government decided to erect a 723-kilometre-long barrier to separate Israel and the West Bank, with the stated purpose of preventing Palestinian suicide bombers from entering Israel.

22. The International Court of Justice, in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1), concluded that the route chosen by the Government of Israel running inside the West Bank, along with the associated regime, gravely infringed a number of rights of Palestinians residing in the territory occupied by Israel, and thus breached various obligations of Israel under international humanitarian and human rights law.

23. The construction of the wall, which fragments the West Bank into non-contiguous enclaves, brought new restrictions on movement and access for Palestinians living near the wall, in addition to widespread restrictions and measures associated with the closure regime of existing checkpoints and roadblocks. In addition to its immediate impact on freedom of movement, the wall and the associated restrictions of movement significantly undermine the enjoyment of a host of other fundamental human rights (see A/HRC/8/18). For this reason, the impact of the wall warrants a closer review in the context of this report.

24. The majority of the route, approximately 87 per cent, runs inside the West Bank and East Jerusalem rather than along the 1949 Armistice Line (Green Line). Despite the judgement of the Israeli High Court of Justice in February 2004,[9] and despite the advisory opinion of the International Court of Justice of 9 July 2004, construction of the wall continues, with approximately 57 per cent of it already completed and 9 per cent presently under construction.

25. On 28 and 29 July 2008, Israeli authorities declared that they would demolish sections of the wall around the village of Bil'in, west of Ramallah, and near Qalqilia, in the northern West Bank, moving the wall's location in those two areas

[9] In February 2004, the residents of several villages north-west of Jerusalem petitioned the High Court of Justice. In its judgement, known as the Beit Sourik case, the High Court ruled that most of the route to which the petition related was illegal, and that the State must propose another route. In light of the judgement, Prime Minister Sharon directed the defence establishment to reconsider the route. A new route was proposed, and the Cabinet approved the amended route in February 2005. For more information, see B'Tselem, http://btselem.org/English/Separation_Barrier/.

by 2.4 kilometres and allowing Palestinian farmers to have access to 2,600 dunums of land. The decisions came after years of deliberations in which the Israeli High Court decided against three sections of the wall on grounds that the harm to Palestinians was disproportionate and ordered the State to move it.[10]

26. In areas where the wall has already been built, extensive violations of human rights of Palestinians living nearby are frequently reported. In areas located between the barrier and the Green Line, which represent 9.8 per cent of the West Bank, access by Palestinian farmers to their lands and water resources is severely limited and can be achieved only through restrictive permit and gate regimes. Farmers need "visitor" permits to cross the wall to reach their farms and wells and, according to the Office for the Coordination of Humanitarian Affairs and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, fewer than 20 per cent of farmers who used to work on their land in those areas prior to the completion of the barrier are now granted access to them.

27. Reduced opportunity for cultivation has led to the dismantling of greenhouses and a change in the nature of crops. As a result, according to the Office for the Coordination of Humanitarian Affairs, unemployment has increased and communities that used to export food have been transformed into recipients of food aid. In addition, health and education services are difficult to access as they lie in what has become the Palestinian side of the barrier. Children, patients and workers have to pass through gates to reach schools, medical facilities and workplaces and to visit family members living on the other side of the wall.

28. For those granted permits, access is possible through a limited number of designated gates. Along the total length of the wall, there are 66 gates currently open on a daily, weekly or seasonal basis. Restricted opening times and the inconvenient location of some gates severely curtail the time available for farming, with a consequent negative impact on rural livelihoods.

29. As at the date of the present report, a 168-kilometre-long section of the wall separates East Jerusalem from the rest of the West Bank. Since 1993, the Government of Israel has erected checkpoints on roads leading to the city and required West Bank Palestinians to obtain permits to enter. Further restrictions were imposed following the beginning of the second intifada. The wall around East Jerusalem further tightens the network imposed to restrict the movement of Palestinians. In conjunction with the identification card and permit system and the series of checkpoints, the wall has weakened the social and economic connections between residents of East Jerusalem and the West Bank.

30. Furthermore, the wall encircles settlements built around Jerusalem and within the West Bank and connects them to Israel, ensuring that Israeli settlers have unimpeded access to Jerusalem. Over 80 per cent of all Israeli settlers living in the West Bank reside to the west of the wall. The settler population and the land area of the settlements have rapidly expanded, helped by the Israeli policy of expanding settlements and by the existence of the wall, which creates a new established border. According to the Israeli Ministry of the Interior, the settler population in the West Bank, excluding East Jerusalem, increased by 5.1 per cent in 2008, from an

[10] The three sections nullified were around the settlement of Alfe Menashe (on 15 September 2005), around the villages of 'Azzun and Nabi Elias (on 15 June 2006) and the section by Bil'in (on 6 September 2007); see http://btselem.org/English/Press_Releases/20080709.asp.

estimated 268,163 in January 2007 to 282,362 in January 2008.[11] At the same time, the wall weaves around and between East Jerusalem and West Bank towns and villages. In some cases it cuts through Palestinian communities, dividing neighbourhoods.

31. Because of the construction of the wall and the permits needed to enter Jerusalem through the four accessible checkpoints along the barrier,[12] access to specialist health care has become increasingly difficult for Palestinians of the West Bank and even those residing in areas of East Jerusalem. Movement restrictions also hamper medical staff from reaching their workplaces. Daily problems or delays for ambulances are also recurrent in emergency situations. In some cases, only after the intervention of the International Committee of the Red Cross, were Palestinian Red Crescent Society ambulances permitted to cross.

32. The wall is dividing students and teachers from their schools. Of the 33,000 students and 2,000 teachers in East Jerusalem schools, as many as 6,000 pupils and more than 650 teachers face difficulty reaching schools. The general school dropout rate increased across the Occupied Palestinian Territory in 2007, reaching 33.4 per cent among males and 27.4 per cent for females,[13] and schools are also struggling to find qualified local staff. In contrast, schools in other areas face severely overcrowded classrooms, as students cut off from other institutions are obliged to move to schools on their side of the wall.

33. Security measures taken by IDF have also had an impact on access to religious sites, and with the construction of the wall, only Palestinian permit-holders from the West Bank can have access to places of worship in Jerusalem, such as the Al-Aqsa Mosque and the Holy Sepulchre. Even for Jerusalem identification holders, access to the mosque is not always guaranteed on Fridays, allegedly for security reasons, and young men may be checked several times before being allowed to enter Al-Haram al-Sharif.

34. During Christian religious seasons such as Christmas and Easter, it may be easier for West Bank Palestinians to obtain permits than at other times of the year. The difficulty of access and the general economic difficulties faced by Christians have resulted in significant emigration from places like Bethlehem.

35. By preventing the ordinary movement of people from the West Bank, the wall has caused the isolation of markets in East Jerusalem: traders and consumers from the West Bank no longer have access to its markets and most Israelis no longer travel to Palestinian areas. Gaza businesses are almost entirely cut off from the Jerusalem economy. As a result, shops struggle to pay municipal taxes and

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[11] See http://www.reliefweb.int/rw/rwb.nsf/db900sid/KKAA-7B35UX?OpenDocument. The figure does not include approximately 200,000 settlers in East Jerusalem. According to the Office for the Coordination of Humanitarian Affairs, in 2007 there were more than 450,000 settlers living in 149 settlements in the West Bank, including East Jerusalem.

[12] Of the 18 functioning crossing points along the wall from the West Bank to Jerusalem, only 4 are accessible to West Bank identification card holders who have been granted permits, namely, the Qalandiya, Shu'fat Camp, Zaytoun and Gilo checkpoints. Of the 14 remaining crossing points, 8 are only for Israeli citizens, including those living in settlements in the West Bank, other Israeli residents, Palestinian Jerusalem identification holders and non-Israelis with valid visas.

[13] See Palestinian Central Bureau of Statistics, http://www.pcbs.gov.ps/desktopmodules/newsscrollEnglish/newsscrollView.aspx?ItemID=664&mID=11170.

eventually often employ only family members to reduce costs or even succumb to financial pressure and close down. Significantly, unemployment in East Jerusalem is much higher than in Israel.[14] According to the Palestinian Central Bureau of Statistics, general unemployment in the Occupied Palestinian Territory in the first quarter of 2008 was estimated to be around 28.9 per cent; specifically, 25.7 per cent in the West Bank and 35.5 per cent in the Gaza Strip (see also A/HRC/7/76 and A/HRC/8/17).

36. Commercial goods coming from the West Bank must pass through major commercial checkpoints in the wall. Traders need prior approval for trade permits for East Jerusalem, which involves a complex and expensive application processes. It is impossible for goods coming from the West Bank and Gaza to enter East Jerusalem unless they have travelled through an Israeli checkpoint.

37. Upon completion, 87 per cent of the wall will be located inside the West Bank, and 9.8 per cent of West Bank territory, including East Jerusalem, will be cut off from the rest of the West Bank. Approximately 420,000 settlers in 80 settlements and 285,000 Palestinians (including in East Jerusalem) will be located between the wall and the Green Line. Approximately 125,000 Palestinians in 28 communities will be surrounded on three sides by the wall, and 26,000 Palestinians in 8 communities will be surrounded on four sides.

C. Destruction of property and infrastructure in the Occupied Palestinian Territory

38. Since the 1993 Oslo Agreements, land in the West Bank has been divided into three areas. Area C, which accounts for approximately 61 per cent of the West Bank territory, remains under Israeli military authority as well as Israeli control over building and planning. Most of the building demolitions during the reporting period took place in that area on the grounds that owners lacked the correct building permits.

39. During the first quarter of 2008, Israeli authorities demolished 124 structures for lack of permits. Of those, 61 were residential buildings that caused the displacement of 435 Palestinians, 135 of whom were children. On 12 March, IDF destroyed residential structures, animal shelters and farm equipment in the Jordan Valley and the Qalqilia district, leaving 75 people homeless. On 11 June, Israeli authorities demolished three houses in East Jerusalem[15] that had allegedly been built without permits. These houses had been inhabited by 25 people, including 18 children.

40. Strict limits are imposed on the demolition of property in occupied territory under international humanitarian law. Article 53 of the Fourth Geneva Convention stipulates that the destruction of property in an occupied territory is permitted only when rendered absolutely necessary by military operations.

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[14] In the third quarter of 2006, the unemployment rate was 19.3 per cent in East Jerusalem compared to 8.3 per cent in Israel.

[15] See Palestinian Centre for Human Rights, Weekly Report No. 24/2008, http://www.pchrgaza.org/files/W_report/English/2008/12-06-2008.htm.

41. Both real and personal property, including immovable and movable assets within the house or its surroundings, are covered by this test of legality. However, international legal restrictions on demolitions were not respected during the reporting period. On 29 April, the High Court of Justice of Israel ruled that demolition orders issued by IDF regarding homes located outside the newly identified town limits of Al Aqaba village were lawful. The Israeli security forces had redefined the town limits, thereby reducing its expanse from 3,500 to 100 dunums. All houses outside the new restricted limits, amounting to approximately 60 per cent of the village's dwellings, have been issued with demolition notices. This will result in the displacement of approximately 211 people, including 130 children.

42. Furthermore, it is difficult for Palestinians to obtain building permits. The Israeli Coordinator of Government Activities in the Territories rarely issues building permits for Palestinians, frequently on the basis that the construction is in violation of the mandatory regional outline plans. Those plans, however, were approved by the British Mandate Government of Palestine in the 1940s and thus fall far short of meeting current requirements. Similar grounds are frequently given for the denial of appeals of demolition orders.

43. The loss of land and property has a significant impact on the enjoyment of fundamental rights by those affected. Among those fundamental rights are the rights to shelter and to the enjoyment of a standard of living that fosters human dignity. The demolition of the family home can have a lasting traumatic impact on civilians, and children may be particularly affected. Behavioural and emotional problems in children whose homes have been destroyed have been found to persist more than six months after the demolition, with a long-term impact on academic achievement and an increased likelihood that the child will leave school before graduation. Symptoms of psychological distress may also include increased aggression and depression. Families may become destitute, particularly when they cannot afford to rebuild their homes elsewhere.

44. Homelessness and severe poverty may be an increasingly significant implication of the demolition regime given the worsening economic situation facing the occupied territories. As a State party to the Convention on the Rights of the Child, Israel is obliged to make the best interests of children a primary consideration in any decision-making process that will affect their welfare. Furthermore, Israel is bound under the International Covenant on Civil and Political Rights to afford due protection to the family, as the fundamental and natural unit of society. The negative impact of the building permit and demolitions regime violates these international human rights obligations.

45. As the occupying Power, the Government of Israel has the authority and responsibility to manage State land under the planning and zoning laws that were in place at the time of the occupation. Under the Hague Regulations, Israel is permitted to benefit from the use of this land on a usufructuary basis, that is, to enjoy the fruits of the land without transferring the legal title away from the original owner. The construction of the wall, roads and settlements violates tnis rule because of the risk that the protected population will be permanently denied the benefits of the land.

D. Palestinians in Israeli prisons

46. According to Palestinian organizations,[16] since the beginning of the Israeli occupation of Palestinian territories in 1967, more than 650,000 Palestinians have been detained by the Government of Israel.

47. As at 31 August there were 8,403 prisoners in Israeli jails and detention centres, 649 of whom were administrative detainees.[17] Administrative detention is detention without charge or trial, authorized by an administrative order rather than by judicial decree. As such, it represents a serious violation of fundamental rights to due process contained in articles 9 and 14 of the International Covenant on Civil and Political Rights, which is binding on Israel both in the Occupied Palestinian Territory and in the Israeli State proper.

48. Serious concerns still exist regarding the conditions faced by Palestinians during detention. Torture and other forms of ill treatment continue to be prevalent in the context of the arrest and interrogation of persons suspected of posing a security threat. Prison conditions in Israel have been the subject of considerable criticism by human rights advocates, who regularly bring complaints to the authorities concerning torture and ill treatment. Complaints have been generally unsuccessful, and the Public Committee against Torture in Israel has consistently reported that the procedures used in investigating complaints of torture and ill treatment are inherently flawed and ineffective.[18]

49. Palestinian prisoners also continue to face other problems, such as inadequate access to health care and food. For women prisoners, sexual harassment, frequent body searches and physical intimidation reportedly take place. In addition, Palestinian minors in detention are not treated in accordance with international standards for the protection of juveniles deprived of their liberty.[19]

50. In terms of family visits, Palestinian detainees can normally only be visited by first-degree relatives. However, following the Hamas takeover of the Gaza Strip in June 2007, the Israeli authorities suspended visits from family members travelling from Gaza to Palestinian detainees in Israel. As a result of this decision, more than 900 detainees have been deprived of direct contact with their relatives for over one year.[20]

51. Detainees and their families in Gaza can communicate only through messages conveyed by the International Committee of the Red Cross. In June 2008, Israeli and Palestinian non-governmental organizations petitioned the Israeli High Court to allow families from Gaza to visit their relatives in Israeli detention centres.[21] As at the date of the present report, no decision had been taken.

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[16] See http://www.addameer.org/detention/background.html.

[17] See http://www.btselem.org/english/statistics/Detainees_and_Prisoners.asp.

[18] See http://www.unitedagainsttorture.org/inuyim%201_88.pdf.

[19] See http://www.addameer.org/detention/women.html and http://www.addameer.org/detention/children.html. The age of 16 is considered the starting point of adulthood in Israeli prisons, not 18 as stipulated by the Convention on the Rights of the Child, to which Israel is a party.

[20] See http://www.icrc.org/Web/Eng/siteeng0.nsf/html/israel-update-300608.

[21] See http://www.hamoked.org/news_main_en.asp?id=541.

III. Recommendations

52. **In view of the worsening human rights situation in the Occupied Palestinian Territory, the United Nations reiterates its commitment to ensuring strong advocacy for the accommodation of the needs and the rights of civilians and reminds the parties of the fact that the primary responsibility for the protection of civilians rests with them.**

53. **The General Assembly and the international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures mandate-holders.**

54. **The General Assembly should seek the assistance of the Security Council in the implementation of the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.**